# IN THE HIGH COURT OF SOUTH AFRICA
# (NORTH WEST DIVISION; MAHIKENG)

Case No: UM117/21

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | First Applicant |
| and | |
| **SEDIBENG WATER BOARD** | First Respondent |
| **THE MEMBER OF THE EXECUTIVE COUNCIL OF THE NORTH WEST PROVINCE FOR THE DEPARTMENT OF CO-OPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS** | Second Respondent |
| **MEMBER OF EXECUTIVE COUNCIL: PROVINCE FINANCE** | Third Respondent |
| **MINISTER OF COOPERATIVE GOVERNACE AND TRADITIONAL AFFAIRS** | Fourth Respondent |
| **MINISTER OF FINANCE** | Fifth Respondent |
| **MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION** | Six Respondent |
| **NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY** | Seventh Respondent |
| **DITSOBOTLA LOCAL MUNICIPALITY** | Eighth Respondent |

DOCUMENT
FILED BY:.....
MR M.P. MOLEFE

| | |
|---|---|
| **MAHIKENG LOCAL MUNICIPALITY** | Ninth Respondent |
| **RATLOU LOCAL MUNICIPALITY** | Tenth Respondent |
| **PREMIER OF THE NORTH WEST PROVINCE** | Eleventh Respondent |

## FILING NOTICE

**DOCUMENT FILED:** FIRST RESPONDENT'S ANWERING AFFIDAVID IN RESPECT OF COSTS

DATED AT MAHIKENG ON THIS THE 03RD DAY OF DECEMBER 2021.

**AA SOLWADLE ATTRONEYS**
(Attorneys for First and Sixth Respondents)
**C/O TIRO ATTORNEYS**
First and Sixth Respondent's Attorneys
43 Shippard Street
Office No.06, Shasons Center
Tel No: (018) 381 0119
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Ref: Mr Monnapula/S006

TO: THE REGISTRAR OF THE HIGH COURT

NORTH WEST DIVISION: MAHIKENG

AND TO: **KRIEK WASSENAAR & VENTER INC**
Applicant's Attorneys
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Received copy hereof on this 3 day of DECEMBER 2021.

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**APPLICANT'S ATTORNEYS**

IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION, MAHIKENG

Case No.UM117/201

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **SEDIBENG WATER BOARD** | First Respondent |
| **MEMBER OF THE EXECUTIVE COUNCIL: NORTHWEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS** | Second Respondent |
| **MEMBER OF THE EXECUTIVE COUNCIL: NORTHWEST PROVINCE: FINANCE** | Third Respondent |
| **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Fourth Respondent |
| **MINISTEROF FINANCE** | Fifth Respondent |
| **MINISTER OF HUMAN SETTLEMENT, WATER AND SANITATION** | Sixth Respondent |
| **NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY** | Seventh Respondent |
| **DITSOBOTLA LOCAL MUNICIPALITY** | Eight Respondent |
| **MAHIKENG LOCAL MUNICIPALITY** | Ninth Respondent |
| **RATLOU LOCAL MUNICIPALITY** | Tenth Respondent |
| **PREMIER OF THE NORTHWEST PROVINCE** | Eleventh Respondent |

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## FIRST RESPONDENT'S ANSWERING AFFIDAVIT IN RESPECT OF COSTS

I, the undersigned

**TOTO MOLOBYE**

do hereby make oath and state as follows:

1. I am;

   1.1 an adult male;

   1.2 appointed by the first respondent as its Acting Chief Executive, in terms of section 36(1) of the Water Services Act 108 of 1997 ("the WSA");

   1.3 stationed at its offices situated at 132 University Drive, Mmabatho, Mahikeng, North West Province.

2. The facts contained herein are within my own personal knowledge and belief, or arise from documents under my control, unless the contrary is expressly indicated, and are both true and correct.



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3. I have read the founding and supplementary affidavits deposed to by the first respondent's legal officer, Mr Tobias Vivian Alberts ("Alberts"). Relying on both of these affidavits, the applicant has set the matter down for hearing in respect of the outstanding issue of costs.

**CONDONATION**

4. On 7 October 2021, in terms of the draft consent order, the first respondent ought to have filed its answering affidavit on or before, Thursday, 28 October 2021.

5. On 28 October 2021, the applicant granted the first respondent an indulgence to file its answering affidavit on Tuesday, 2 November 2021.

6. Due to the financial predicament that the first respondent has been placed caused by non-payment by the various municipalities, it was unable to implement the salary increase in terms of the collective agreement it concluded with its employees and there was a further possibility that it would not pay its staff timeoulsy. As a result of this, the first respondent's employees embarked on a strike.

7. The consultation to finalise the answering affidavit, which had commenced, had to be postponed mid-way through so that the employer representatives could engage with the labour unions and resolve the situation.

8. At the subsequent consultation, held on 3 November 2021, whilst settling the draft affidavit, further instructions were received in respect of the factual averments



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contained in the affidavit. This necessitated a substantial amendment of the affidavit.

9. The amendments were effected during the weekend of 5 November 2021 and the settled affidavit was sent to the first respondent's attorneys on the evening of Monday, 8 November 2021, to attend to the commissioning and signing of the affidavit.

10. As a result of the instability prevailing at the first respondent's offices, the affidavit was not signed during the week.

11. At the end of the week, on Friday, 12 November 2021, it was established that the affidavit had not yet been signed. The heading of the affidavit had to be corrected. This was attended to on Wednesday, 17 November 2021. On that date, Junior Counsel was instructed to draft an application dealing with condonation for the late filing of the affidavit.

12. Junior Counsel was engaged in a matter out of town from 11 November 2021 to 22 November 2021, and attended to amend the affidavit, dealing with condonation on the evening of 22 November 2021.

13. It is evident that the delay was not deliberate or in disregard for the rules of court and the order of 7 November 2021. Steps were taken to finalise the affidavit as expeditiously as possible.



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14. The issues that arise are of considerable importance, not only to the parties but also to the public. It deals with the right of access to sufficient water, enshrined I the Constitution and the state's obligation to progressively realise this right. It also deals with the principles of co-operative governance and the obligation to pay for water services.

15. Consequently, it is in the interests of justice to condone the first respondent's lateness and permit the affidavit to be filed so that the matter can be properly adjudicated based on all of the relevant facts.

## THE PURPOSE OF THIS AFFIDAVIT

16. The purpose of this affidavit is twofold:

16.1 Firstly, it is to set out the first respondent's opposition to the adverse cost order, on the attorney and client scale, sought by the applicant.

16.2 Secondly, it is to demonstrate why the appropriate order, in the circumstances, is one directing each party to pay its own costs.

17. In the present application, the applicant invokes rights contained in the Bill of Rights, specifically, sections 10, 11, 22, 24, 27 and 33 of the Constitution of the Republic of South Africa Act 108 of 1996 ("the Constitution").

18. I am advised that in in respect of matters between private parties and the state, where litigants seek to vindicate Constitutional rights, the following principles and



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the approach laid down in *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC) should be followed:

18.1 a successful party should be awarded his or her costs;

18.2 an unsuccessful private party should not be ordered to pay the state's costs; each party should bear its own costs where the state wins.

19. As I will illustrate below, the applicant would not been successful in obtaining the substantive relief directed at reviewing and setting aside the decision as well as the other relief sought in Part C. As it is an unsuccessful private litigant, an applying the principles in *Biowatch*, it would be fair that each party should pay its own costs.

## SYNOPSIS OF THE RELIEF SOUGHT

20. In Part A of the notice of motion, the applicant sought an urgent interim interdict prohibiting the first respondent from suspending water services, pending the determination of the relief in Parts B and C.

21. The relief sought in Part B of the notice of motion, is with respect, unclear. It is a repetition of Part A, save for including a prayer for costs.

22. The ambit of the relief sought in Part C is extremely wide and is summarised as follows:



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22.1 declaring the proposed suspension of water services to be unconstitutional, unlawful, and invalid.

22.2 reviewing and setting aside the decision in terms of section 6 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA");

22.3 declaring that the failure by the respondents to co-operate with one another and invoke the available legislative interventions so as to ensure that the respondent municipalities pay the first respondent, is in conflict with and contrary to the Intergovernmental Relations Framework Act 13 of 2005 ("IRFA") and the Municipal Finance Management Act 56 of 2002 ("the MFMA").

22.4 directing the respondents to exercise their powers in terms of Chapter 13 of the MFMA to resolve the financial difficulties of the respondent municipalities, particularly their failure to pay the first respondent;

22.5 prohibiting the first respondent from interrupting or disconnecting the supply of water services for the purpose of compelling the respondent municipalities to pay their arrear debts due to it; and

22.6 ordering that the first respondent be directed to pay the costs of Part C, on the scale as between attorney and client, including the costs of two counsel, where so employed.



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## THE FIRST RESPONDENT

23. The first respondent is a water services institution, as defined in section 1 of the WSA. It is a water board, as contemplated in Chapter 5 of the WSA, whose primary activity is to provide water services to other water services institutions, including the respondent municipalities.

24. Initially, the Botshelo Water Board ("BWB") provided water services to the respondent municipalities. Due to the respondent municipalities' failure to pay BWB for water services, it was disestablished by the sixth respondent, in terms of section 28(1)(d) of the WSA. The notice of disestablishment was published in Government Notice. 238 appearing in Government Gazette 37503 on 1 April 2014. I annex a copy hereto, marked **"AA1"**.

25. With effect from 1 October 2014, the first respondent's jurisdiction to provide water services was extended to include the entire area of the seventh respondent, for a period of five years. In addition, all assets and liabilities of BWB were transferred to the first respondent. In extending the first respondent's jurisdiction, the sixth respondent acted in terms of section 28(1)(c) of the WSA, which directive was published in GN 811 in GG 38100 on 15 October 2014. I annex a copy hereto, marked **"AA2"**.

26. The first respondent provides operations and maintenance services as well as bulk water supply services. In addition, the first respondent supplies bulk potable water to the respondent municipalities as well as to certain consumers directly.



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27. Despite the provision of such services, the first respondent is in a precarious financial situation which can be attributed to a persistent failure of the municipalities to regularly pay for the services rendered. The consequence of this is that the first respondent is unable to pay its suppliers. Recently, on 24 October 2021, the sixth respondent had to provide the first respondent with R 4 million as a bailout to pay Eskom to restore its electricity supply.

28. It is in this context, that the conduct of the first respondent, must be assessed.

## THE EXERCISE OF THE FIRST RESPONDENT'S STATUTORY POWER

29. On 30 April 2021, following numerous unsuccessful engagements and written demands for payment, the first respondent exercised its statutory powers in terms of section 31(3) of the WSA to suspend the provision of water services to the seventh and eighth respondents.

30. Section 31(3) provides that:

> *"Subject to section 4, a water board may limit or discontinue water services or other services provided to water services institutions, consumers or users."*

31. The only pre-condition to exercising this power in the case of a water services institution, such as the respondent municipalities, is that the first respondent is obliged to follow the procedure regulated by section 4(5) of the WSA ("the section 4(5) notices"), which requires that:



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*"Where one water services institution provides water services to another water services institution, it may not limit or discontinue those services for reasons of non-payment, unless it has given at least 30 days' notice in writing of its intention to limit water services or 60 days' notice in writing of its intention to discontinue those water services to –*

*(a) the other water services institutions;*
*(b) the relevant Province; and*
*(c) the Minister.*

32. It will be noted that Section 4(5) does not require a public participation process to be undertaken either before a decision is taken or afterwards. The purpose of this contention will become apparent hereunder.

33. On 30 April 2021, the first respondent delivered written notices of the intended suspension to the seventh and eighth respondents, signed by its erstwhile Chief Executive at the time, the late Mr. Mbulawa. Copies of the notices are annexed hereto, marked **"AA3"** and **"AA4"**, respectively.

**The section 4(5) notice to the seventh and eighth respondents**

34. In the notice to the seventh respondent, marked "AA3", Mr. Mbulawa highlighted the gravity of the seventh respondent's default by stating that the current outstanding amount due to the first respondent for operations and maintenance charges (excluding bulk water supply services) was R 539,339,390.02 and that the last payment of R 4,008,294.84 for operations and maintenance charges was received in October 2015.



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35. He proceeded to advise the seventh respondent as follows:

> *'With the above in mind, it is with regret to inform Ngaka Modiri Molema District Municipality (NMMDM) that Sedibeng Water, without any payment and any written commitment to commit to such, SW will cease to deploy its own financial reserves to the service of NMMDM for the provision of the Operation and Maintenance services in the local municipalities mentioned below, as per the discussion in the meeting of the 29th April 2021;*
>
> - *Mahikeng Local Municipality*
> - *Ramotshere Moiloa Local Municipality*
> - *Ratlou Local Municipality*
>
> *It is incumbent upon Ngaka Modiri Molema District Municipality to communicate this decision to all the above-mentioned Local Municipalities and its communities well in time. NMMDM will take over the services of operation and maintenance themselves as from 1st June 2021 until sufficient payments have been received to be able to deliver the service as being expected.*
>
> *The suspension of the O&M services will be throughout the area of responsibility of Ngaka Modiri Molema District Municipality as mentioned above and the specific areas that will be directly affected by Sedibeng Water suspension of services are attached on this letter as Annexure A".* (emphasis added)



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36. The following is evident from the notice:

36.1 The first respondent will cease the provision of operations and maintenance services to the seventh respondent, with effect from 1 June 2021;

36.2 The suspension was due to a failure on the part of the seventh respondent to make payment or enter into an arrangement to make payment;

36.3 The outstanding amount for operations and maintenance charges was approximately R 539 million and the last payment had been made in October 2015;

36.4 The suspension would be affected until the seventh respondent made sufficient payment to enable the first respondent to deliver the water services;

36.5 The first respondent could not continue to deploy its own financial reserves to provide the services to the seventh respondent;

36.6 The seventh respondent would take over the provision of the services during the period of suspension;

36.7 The seventh respondent was instructed to advise the local municipalities and the communities of the suspension;



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36.8 The suspension would be for the entire area of the seventh respondent.

37. In the notice to the eighth respondent annexed as "AA4", the late Mr. Mbulawa pointed out that the outstanding amount due by the eighth respondent for bulk water services was R 63,877,887.24. He then advised the eighth respondent as follows:

> *"The last payment of R 1,159,011.28 for bulk account was received during July 2018. It is therefore a challenge for Sedibeng Water to continue with the delivery of the expected service if no payment is received to date for the service rendered. Financial deprivation is further damaging to the image and credibility of Sedibeng Water.*
>
> *With the above in mind, it is with regret to advise Ditsobotla Local Municipality that Sedibeng Water, without any payment and any written commitment to such, SW will cease to deploy its own financial reserves to the service of DLM for the provision of bulk services in the local municipality.*
>
> *It is incumbent upon Ditsobotla Local Municipality to communicate this decision to all of their key stakeholders and its communities well in time. DLM will take over the services of bulk themselves as from 1st July 2021 until sufficient payment has been received to be able to deliver the service as being expected."* (emphasis added)



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38. The following is evident from the notice:

38.1 The first respondent will cease the provision of operations and maintenance services to the eighth respondent, with effect from 1 July 2021;

38.2 The suspension was due to a failure on the part of the eighth respondent to make payment for bulk water services, with the last payment being made in July 2018;

38.3 The absence of payment made it a challenge for the first respondent to continue providing the services;

38.4 The suspension was occasioned by a failure to make payment or enter into an arrangement to pay;

38.5 The first respondent could not continue to deploy its own financial reserves to provide the services to the eighth respondent;

38.6 The eighth respondent would take over the provision of the services from 1 July 2021, during the period of suspension, which would endure until sufficient payment is made for the first respondent to continue providing the service;



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38.7 The eighth respondent was instructed to advise the key stakeholders and the communities of the suspension;

39. I draw this Honourable Court's attention to the fact that in both the notices, the first respondent specifically advises that it cannot continue to deploy its own resources to provide the services. Rendering services in the absence of collecting payment would result in a breach of the first respondent's statutory obligations in terms of the Public Finance Management Act 1 of 1999 ("PFMA").

40. In terms of the PFMA, the accounting officer, in this case the Chief Executive Officer, would breach the following duties:

40.1 the duty to ensure that the first respondent maintains an effective, efficient and transparent system of financial risk management and internal control, as required by section 38(1)(a)(i);

40.2 the duty to ensure that all appropriate steps are taken to collect all money due to the first respondent, as required by section 38(1)(c)(i);

40.3 the duty to ensure that all contractual obligations are settled within the prescribed period, including all intergovernmental claims, as required by section 38(1)(f).

41. The notices were delivered to the seventh and eighth respondents on 30 April 2021 and advised of the implementation of the decision on 1 June 2021 and 1 July





2021, respectively. The first respondent complied with the stipulated 60 day notice period and in the case of the eighth respondent, an additional 30 days' notice was afforded.

42. As required by section 4(5)(b) and (c) of the WSA, the first respondent also notified the second and sixth respondents of the proposed suspension. I annex proof hereto, marked **"AA5"**.

43. I respectfully submit that:

43.1 the constitutionality of these provisions have not been challenged by the applicant;

43.2 the power exercised by the first respondent was lawfully authorised by the empowering provision, i.e. section 33(3) of the WSA;

43.3 the first respondent properly complied with the procedure determined by the legislature when suspending services for non-payment. To the extent that it is found that we did not fully comply, such compliance was substantial, Any deviation is fair in the circumstances and gives effect to the purpose of the legislative provision;

43.4 the applicant's challenge to the fairness of the procedure followed by the first respondent must fail.



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44. I point out that although the section 4(5) notices do not specifically refer to the relevant provisions of the WSA, there can be no doubt that it constitutes the requisite notice contemplated in section 4(5).

45. I contend that:

45.1 the first respondent did not exercise its power *mala fide*;

45.2 the first respondent followed a fair procedure;

45.3 the decision is substantively fair and rational;

45.4 there were no exceptional circumstances present that would have entitled a court to interdict the first respondent from exercising its statutory power.

46. I have been advised that the exercise of a statutory power will only be interdicted in exceptional circumstances and in the most clearest of cases. The merits of the relief sought in Part C are poor. This fact in itself is dispositive of the interdictory relief. As I will demonstrate below, this is not one of those cases where the exercise of a statutory power would have been interdicted.



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## CONCISE SUMMARY OF THE APPLICANT'S CASE

47. The applicant seeks to interdict the first respondent's decision to suspend the provision of water services in terms of a notice annexed as "X3" to Albert's founding affidavit, pending the determination of the relief sought in Part C.

48. It contends that the decision is unconstitutional on the basis that it was not lawfully authorised by an empowering provision and was taken in the absence of a prior public participation process, which it avers was mandatory.

49. The applicant also contends that the various organs of state involved failed to observe the obligations of co-operative governance, enshrined in the Constitution and in IRFA. A further complaint is that the legislative measures were not exhausted prior to the first respondent's suspension decision, rendering the decision unreasonable and disproportional. There is no merit in any of the applicant's contentions.

## THE INTERNAL NOTICE TO THE STAFF OF THE FIRST RESPONDENT, DATED 25 MAY 2021

50. The entire basis of the application is, with respect, misplaced. The relief sought by the applicant is solely based on the notice issued by the first respondent's regional manager, Mr. Sibongiseni Mbadamana, annexed as "X3" to Alberts' founding affidavit. It misconstrues the notice as a decision by the first respondent, which it



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seeks to interdict, pending, *inter alia*, a review of the decision, as if the notice constitutes a decision reviewable under PAJA.

51. This much is evident from Alberts' statement at paragraph 31 of his founding affidavit that *"the applicant became aware of the decision of the first respondent, which is dated 25 May 2021, and communicated via notice to employees attached as annexure "X3"*.

52. However, the facts narrated above unequivocally demonstrate the inaccuracy of the applicant's contention. The decision was in fact taken on 30 April 2021.

53. The notice is merely an internal communication to staff so as to regularise their operational arrangements. It does not constitute a decision, as contemplated in section 1 of PAJA, and is not a record of decision.

54. Despite the position being clarified in the letter from the first respondent's attorneys on 29 May 2021, the applicant declined the invitation to withdraw the application, with each party to pay its own costs, and unreasonably persists in its prayer for an adverse cost order.



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## THE TELEPHONIC DISCUSSION BETWEEN MR. MBADAMANA AND MR. WASSENNAAR

55. The present application was prompted by two events. The first was the issue of the impugned notice and the second was the telephonic discussion between the applicant's attorney, Mr. Wassennar and Mr. Mbadamana.

56. Upon a careful reading of the transcript of their conversation, it emerges that Mr. Wassenaar misled and threatened Mr. Mbadamana in various respects. After introducing himself, he promptly advised Mr. Mbadamana that the applicant was *"busy with a case against the Ditsobotla local municipality, which is included within the Ngaka"*.

57. Mr. Wassennaar then proceeded to demand whether the first respondent followed the intergovernmental procedures by referring the non-payment issues to the relevant provincial and national structures. When Mr. Mbadamana confirmed that despite notifying them, they have not responded, Mr. Wassennaar then proceeded to accuse the first respondent of using end consumers as *"a bargaining chip in the hands of the state"*, despite acknowledging, on numerous occasions during their brief conversation, that the first respondent needs to be paid.

58. Mr. Wassennaar's statement that the decision is unlawful and improper as a public participation process was not followed, is , with respect, grossly misleading. He then advised, as a definitive statement of fact, that in the absence of any prior public participation, the decision will be set aside in terms of PAJA.

59. This contention is wrong in law as a public participation process is not required in the circumstances. The particular function of termination due to non-payment is reserved for the first respondent alone and the process to follow is regulated by section 4(5) of the WSA. I elaborate on this aspect under the heading on the challenge to procedural fairness below.

60. He also threatened the institution of an urgent application, pending a review of the decision. Mr. Wassennaar advised that in as much as the applicant would like to assist to resolve the situation, if government, including the first respondent did not co-operate, they would go to court. He then demanded that Mr. Mbadamana cause the decision to be reviewed internally and to follow a public participation process, failing which "*you will have no foot to stand on in court*".

61. This suggestion is even more misleading as the decision that was taken is final and has been communicated to the affected municipalities. Consequently, the first respondent is bound by it and cannot, of its own accord, simply disregard the decision. I have been advised that it is well established that administrative action remains valid and binding until set aside by a competent court on review.

62. I point out that although the first respondent subsequently withdrew the notice, it did not constitute a decision, as explained above. The decision remains valid and binding on the first respondent.



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63. Mr. Mbadamana was correct in asserting the first respondent's position and advising Mr. Wassennaar to *"do what you feel is right from your side to do and we will take it from there."*

64. Before ending the conversation, Mr. Wassennaar states that the first respondent cannot "*merely come and turn off the taps*" because the relevant spheres of government refused to assist. This is a direct acknowledgement that the first respondent is in an invidious position.

65. Following the failed attempt to threaten Mr. Mbadamana to accede to the applicant's demands, the urgent application was launched the next day.

## THE INTERIM INTERDICT

66. The applicant sought to interdict the exercise of a statutory power on an interim basis, pending the determination of the final relief sought in Part C. I have been advised that this can only be done if there are exceptional circumstances present. Additionally, it will only be done in the clearest of cases. For the reasons set out hereunder, I contend that the interdict applications did not have any merit.

67. The applicant primarily relies on the right to water enshrined in section 27 of the Constitution. The salient provisions read as follows:

> *"(1) Everyone has the right to have access to –*
>
> *(a) …*



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*(b) Sufficient food and water; and*

*(c) ...*

*(2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of these rights."*

68. The right is limited by the sixth respondent's determination, in terms of the WSA, of the minimum basic supply of water of 25 litres per person or 6 kilolitres per household, per month. I annex a copy of the Compulsory National Standards and Measures to Conserve Water hereto, marked **"AA6"**, published in GN R509 in GG 22355 on 8 June 2001.

69. It is well settled that the positive obligation of the State is to take reasonable legislative and other measures to *"progressively"* realise the achievement of the right of access to sufficient water, *"within its available resources"*. Consequently, the right of access to sufficient water is dependent on the available resources of the State. It does not confer a right to demand *"sufficient water"* from the State immediately nor is there any right to demand the supply of an unlimited quantity.

70. Unfortunately, the applicant misconstrues the right and seeks to extend its ambit as well as the state's obligation by alleging an entitlement to an unlimited supply of water, as long as it is paid for. This is evident by Alberts' statement at paragraph 74 of his founding affidavit that:

*"The applicant further seeks to protect the rights in the interest of the end-users of water services who have paid and continue to pay for the provision of water services in the affected*



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*municipalities but stand to be cut off together with the rest of the communities in the affected municipalities."*

71. Most significantly, section 27(1)(b) does not confer any right to demand water as long as it is paid for. This is fortified by the power conferred by section 31(3) to terminate the provision of water services to the respondent municipalities in the event of non-payment. In order to give effect to the state's constitutional obligation to progressively realise access to water, it requires sufficient resources. This places an obligation on the respondent municipalities to pay the first respondent for water services rendered.

72. I also point out that the businesses in the area are not bearers of constitutional rights and have no right to water at all.

73. Secondly, the right is limited by the provisions of section 31(3) of the WSA, which empowers the first respondent to terminate the supply of water services in the event of non-payment, provided it follows the procedure outlined in section 4(5) of the WSA.

74. The applicant has not challenged the constitutional validity of these sections. However, the limitation imposed by section 31(3) is reasonable and justifiable in terms of section 36 of the Constitution. Accordingly, this Honourable Court must proceeded on the basis that the empowering provision, in terms of which the decision was taken, is lawful and constitutionally compliant.



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75. The WSA does not envisage any public participation process prior to, or after, the exercise of the first respondent's power. It is only a requirement that a rational decision be taken, and that notice be given to the respondent municipalities as part of their right to *audi alteram partem*, and to the MEC and the Minister as part of their oversight powers. Not only were these latter mentioned parties notified, but they were well aware of the situation. I elaborate on this later below.

76. Notably, it failed to demonstrate any exceptional circumstances for this Honourable Court to interdict the exercise of a statutory power. In all probability, the interim interdict would have been refused. In the face of this, no cost order, let alone an adverse cost order on the attorney and client scale, is justified against the first respondent.

**THE APPLICANT FAILED TO DEMONSTRATE THAT THE FIRST RESPONDENT'S CONDUCT IS UNCONSTITUTIONAL AS CONTEMPLATED IN SECTION 172(1)(a) OF THE CONSTITUTION**

77. In prayer 1 of Part C of the notice of motion, the applicant seeks a declaration that the first respondent's decision is unconstitutional, unlawful and invalid.

78. The challenge to the constitutionality of the first respondent's conduct rests on the following grounds:



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78.1 The decision is as a result of the failure of the various organs of state and spheres of government to co-operate with one another; and

78.2 It infringes the rights of access to sufficient water enshrined in section 27(1)(b) of the Constitution.

79. The applicant also challenges the decision on the basis that it infringes the right to just administrative action and is reviewable in terms of PAJA. I deal with this under a separate heading below.

**The failure of the various organs of state to comply with their statutory obligations to co-operate with one another**

80. The respondent municipalities' failure to pay constitutes a breach of its constitutional obligations. I briefly set out the statutory framework as follows:

81. Its functions and obligations must be considered with reference to the functions and responsibilities of municipalities set out in the Local Government: Municipal Systems Act (Municipal Systems Act). Section 1 defines 'basic municipal services' as 'a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment'. Section 4 provides for the rights and duties of municipal councils. According to section 8(2) '(a) municipality has the right to do



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anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers. Section 11(3) provides for the exercise of legislative and executive authority by municipalities through a number of means.

82. Finally, section 23(1) places an obligation on municipalities to 'undertake developmentally-oriented planning' in order to ensure that they achieve the objects of local government in s 152 of the Constitution, give effect to their developmental duties in s 153 of the Constitution, and together with other organs of state contribute to the progressive realisation of the fundamental rights contained in, *inter alia*, section 27(1)(b) of the Constitution Section 73(1) places a general duty on municipalities to give effect to the provisions of the Constitution and to give priority to the basic needs of the local community; promote the development of the local community; and ensure that all members of the local community have access to at least the minimum level of basic services.

83. The failure of the respondent municipalities to pay for water services constitutes a breach of its constitutional obligation, as an organ of state to ensure that there are adequate financial resources to give effect to the measures determined by national government, as the trustee of the nation's water resources, to progressively realise the right of access to sufficient water.

84. These measures include the suite of water legislation promulgated, including the WSA as well as the Pricing Strategies and the National Water Resources Strategy ("NWRS").

85. Thee Pricing Strategies regulate the charges of raw water usage and are promulgated in terms of the National Water Act 36 of 1998. I annex copies of the Pricing Strategies hereto, marked **"AA7"** and **"AA8"**, respectively. The pricing strategy deals with first tier water rights which deals with raw water. The second and third tier rights are deal with water supplied in bulk and delivered to households, usually by water boards.

86. The NWRS is an intricate framework, devised in terms of section 5(1) of the National Water Act 36 of 1998 ("NWA"), which sets out the strategies, objectives, plans, guidelines and procedures of the sixth respondent and institutional arrangements relating to the protection, use, development, conservation, management and control of water resources for the country as a whole.

87. A revised framework, the NWRS2, was developed in terms of section 5(4)(b) of the NWA, after the sixth respondent received public comment. I annex a copy hereto, marked **"AA9"**.

88. I draw this Honourable Court's attention to the provisions of Chapter 12 of the NWRS2 which emphasises that having the necessary financial resources in place, together with systems, structures and processes, will enable the implementation and progress monitoring of the NWRS2.



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89. At page 84 of the NWRS2, it records the financial challenges faced and identifies the following risks in the absence of sufficient and properly managed financial resources:

89.1 NWRS2 cannot be properly implemented;

89.2 Works will not be constructed, refurbished, or properly allocated;

89.3 Water institutions will not be financially sustainable;

89.4 There will be no sustainable water resource management, meaning that the environment will not be protected, the social obligations will nt be met and there will be no economic growth;

89.5 Water will not be available where required at the required level of assurance;

89.6 Every sector dependent on water, including domestic, agricultural, industrial and energy will be unable to grow.

90. Significantly, the NWRS and NWRS2 are binding not only on the sixth respondent but extends to all organs of state, including the respondent municipalities, who bear a mandatory obligation to give effect to the NWRS and NWRS2 when exercising any power or performing any duty in terms of the NWA.



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91. I reiterate that this includes the obligation that the respondent municipalities pay the first respondent for water services to ensure sustainable financial management and administration.

92. It also impedes the first respondent from complying with its statutory obligation, created by section 34(1)(c) to strive to be financially viable. As stated above, on 24 October 2021, the electricity supply to the first respondent was terminated as it failed to pay Eskom. The second respondent granted the first respondent a bail-out of R 4 million to restore the connection. I annex a copy of the article published on the South African Government's website as annexure **"AA10"**, hereto.

93. In the absence of timeous and sufficient payment, the first respondent is at risk of being disestablished on the basis that it is not financially viable, a fate which befell its predecessor, the Botshelo Water Board.

94. When Botshelo Water was disestablished, its assets and liabilities were transferred to the first respondent. The long outstanding debt due by the respondent municipalities was transferred to the first respondent. As the non-payment constitutes a breach of the respondent municipalities' constitutional obligations, it cannot prescribe.

95. The first respondent is in the invidious position that it must recover that debt, recover payment of the new debt incurred, and obtain payment of the current charges incurred, whilst meeting its financial obligations to its suppliers.



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96. To this end, and prior to the decision to suspend the provision of water services, the first respondent delivered a demand for payment on 15 March 2018. The demand refers to a previous notice of an intention to limit the supply of water unless payment was received. The demand points out that payment was not made and provides further payment terms, failing which the water services will be limited. I annex a copy of the demand hereto, marked **"AA11"**.

97. Recently, on 19 March 2021, it delivered two written demands for payment to the respondent municipalities. Copies are annexed hereto, marked **"AA12"** and **"AA13"**. It will be noted that detailed statements of account are attached to these demands, from which it emerges that the debt arises from 2011.

98. On 29 April 2021, a meeting was held with the first, seventh, eighth and ninth respondents to resolve the issue of non-payment. Instead of making an arrangement to pay, the representative of the seventh respondent indicated that the municipal council had resolved to terminate the contract with the first respondent and provide the water services internally.

99. The notices marked "AA1" and "AA2" were then delivered. Even after this, a further letter was delivered on 17 May 2021, to the eighth respondent, in which the first respondent refers to the numerous engagements and recent correspondence notifying of the intended suspension of bulk water supply services

unless payment is received. A copy of the letter is annexed hereto, marked **"AA14"**.

100. Notably, although the letter advises that the intended suspension will be implemented, it makes it clear that the first respondent will still ensure the safety of the water facility.

101. The letter goes on to state that:

> *"It is against this background that Sedibeng Water would like to repeat to the municipality that, indeed Sedibeng Water will not be performing any bulk water supply services from the 01 July 2021. However, Sedibeng Water will not be negligent to leave the infrastructure like the water treatment plant unattended. The employees and security services will remain onsite in order to ensure care and safety of the facility. It should however be noted that the cost for such will be on the account of the Municipality.*
>
> *It is incumbent upon Ditsobotla Local Municipality to further communicate this decision to all the affected communities well in time. Ditsobotla Local municipality will take over the services of bulk water supply themselves as from 1st July 2021 until sufficient payments has been received and a payment plan has been agreed to by both parties, to enable the continuation of services as expected."*

102. On 17 May 2021, a further letter was sent, annexed hereto marked **"AA15"**, and which advises the seventh respondent that:

> *"It is against this background that Sedibeng Water would like to repeat to the municipality that, indeed Sedibeng Water will not be performing any Operation and Maintenance services from the 01 June 2021."*

103. On 20 May 2021, in a further attempt to obtain payment, the first respondent dispatched letters of demand to the seventh and eighth respondents demanding

payment of interim amounts. I annex copies of the demands hereto, marked **"AA16"** and **"AA17"**.

104. Following from the engagements and numerous written demands, which were unsuccessful, the impugned notice was issued by Mr. Mbadamana on 25 May 2021. It is an internal communication to the first respondent's staff to regularise their internal operations and arrangements.

105. In assessing the first respondent's conduct, the further aspect to consider is the breach of the respondent municipality's statutory obligation to conclude an operations and maintenance contract and extend the bulk water supply contract.

106. Water services must be provided in terms of conditions set by the water services provider. The requirement that the contract must be in writing was introduced by the Water Services Provider Contract Regulations published in terms of section 4(1) of the WSA in GN R980 in *GG* 23636 of 19 July 2002. I annex a copy of GN R980 hereto, marked **"AA18"**.

107. Despite numerous requests by the first respondent, the seventh respondent has refused to conclude an operations and maintenance contract and has only concluded a bulk water supply contract, which has terminated by effluxion of time.

108. Its refusal is evident from the minutes of the co-ordinating committee dealt with below.

109. At the first meeting of the co-ordinating committee, held on 16 March 2015, between the first, seventh and ninth respondents, the meeting resolved that the seventh respondent and the local municipalities would be provided with service level agreements, which they should sign, to regulate the provision of water services. A copy of the minutes is annexed hereto, marked **"AA19"**.

110. At a further meeting of the co-ordinating committee held on 24 April 2015, at which the first and seventh respondents, as well as all the local municipalities were present, it was agreed that the municipalities would be provided with hard copies of the draft service level agreements, which should be signed by 20 May 2015. A copy of the minutes is annexed hereto, marked **"AA20"**.

111. Well aware of its statutory obligations, a written water services provider contract was concluded between the first and seventh respondents to regulate the provision of retail and bulk water services. This included the supply of bulk (potable water), management, operations and maintenance of services of bulk water infrastructure, the supply of water to consumers directly and the reading, installation and maintenance of water meters.

112. I point out that bulk water supply contract excluded the provision of operations and maintenance services for the other water infrastructure. The contract was for a period of five years, but was extended twice, for a period of six months in each





instance. It is scheduled to end in December 2021. I annex a copy of the contract hereto, marked **"A21"**.

113. The conclusion of the bulk water supply agreement demonstrates the respondent municipalities' awareness of its statutory obligation. Unfortunately, this was the end of any cogent co-operation from the respondent municipalities. Having concluded the bulk water supply agreement, the irresistible inference to draw in the circumstances is that its refusal was deliberate.

114. The seventh respondent's subsequent request for a meeting to conclude the operations and maintenance contract was not genuine. Despite confirming the first respondent's availability to attend the meeting, it never materialised. I annex a copy of the correspondence exchanged hereto, marked **"A22"** and **"AA23"**, respectively.

115. On 19 November 2018, by which time the contract was still not concluded, a further meeting was requested to finalise the contract. In the letter dispatched, it is pointed out that the first respondent is severely prejudiced in the absence of a contract as it is rendering the water services, in terms of the Ministerial directive, but is not being compensated by the seventh respondent. I annex a copy of the letter hereto, marked **"A24"**.

116. The sixth respondent's directive was scheduled to end on 30 October 2019. With the deadline looming and uncertainty as to the future arrangements, this issue was raised on 30 April 2019, at a meeting of the executive committee of the first

respondent. It was resolved that the Acting Chief Executive would have a meeting with the Provincial department and the seventh respondent to discuss the way forward. I annex a copy of the minutes hereto, marked **"A25"**.

117. At a meeting of the co-ordinating committee held on 17 July 2019, between the first and seventh respondents and all the local municipalities, it was proposed that the bulk water supply contract between the first and seventh respondents should be reviewed as early as possible. It was agreed that this would be clarified after the meeting. I annex a copy of the minutes hereto, marked **"A26"**.

118. In a letter dated 19 June 2020, the Municipal Manager of the seventh respondent advised that the bulk water supply contract would expire on 20 June 2020 and requested a close out report by 24 June 2020. This emanated from the view that the seventh respondent, as the water services authority, would take over the provision of all water services. I annex a copy of the letter hereto, marked **"A27"**.

119. Despite having advised the first respondent of the intention to take over the provision of water services and enter into an arrangement to liquidate the historic debt by 14 July 2020, this undertaking was not complied with. Save for extending the bulk water supply contract for two further periods of six months each, no further fruitful discussions were held about the outstanding payment or the conclusion of an operations and maintenance contract.



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120. The present position is that:

120.1 there is no operations and maintenance service agreement;

120.2 the bulk water services agreement has terminated by effluxion of time;

120.3 notwithstanding the above, the first respondent has continued to provide the water service to the respondent municipalities;

120.4 the arrears have not been liquidated.

121. In dealing with the first ground, the facts set out above refute the applicant's contention that it did not seek the assistance of the other organs of state to resolve the non-payment and regularise the contractual arrangements. Firstly, it took steps to obtain the co-operation of the respondent municipalities to make payment and to conclude an operations and maintenance contract. In fact, Mr. Mbadamana specifically advised Mr. Wassennaar that the provincial and national spheres of government were notified and have not assisted the first respondent.





122. The respondent municipalities have failed to pay the first respondent for the water services provided to them. As stated above, this constitutes a breach of their constitutional obligations.

123. While IRFA provides a dispute resolution mechanism in terms of Chapter 4, the prerequisite is that there must be a dispute between the parties, which must be formally declared in terms of section 41 of IRFA.

124. In the present instance, there is no dispute between the parties as to the obligation on the respondent municipalities to pay for the water services rendered. It is merely a failure to pay or make adequate arrangements to pay the first respondent. Settlement discussions have proved futile. Consequently, no dispute has been formally declared.

125. There is no dispute between the parties. There is no dispute regarding the payment. It is merely a refusal to pay. There is no dispute regarding the contract as the respondent municipalities have indicated that they do not wish to enter into contracts with the first respondent, for the provision of water services.

126. IRFA creates a dispute resolution mechanism to resolve a dispute between parties prior to them approaching a court for resolution of the dispute. To this end, section 45 prevents an organ of state from approaching a court for relief prior to invoking the dispute resolution mechanism in Chapter 4 of IRFA. In the present instance, it is the applicant that approached the court for relief.





127. In any event, the breach of the constitutional obligation resting on the respondent municipalities is incapable of being resolved by the dispute resolution mechanism in IRFA. Only a competent court can do so.

128. A determination of whether or not a party is in breach of its constitutional obligation, and, if so, a just and equitable remedy in the circumstances, are constitutional matters which are only justiciable by a court of law under section 172(1) of the Constitution, which is the final arbiter, and not the persons or entities referred to in Chapter 4 of IRFA.

129. Consequently, the applicant's contention that the first respondent ought to have exhausted the dispute resolution mechanism in IRFA is misplaced.

130. In terms of the WSA, section 63 is a remedy available to the sixth respondent and not to the first respondent.

131. Sections 135 to 140 of the MFMA, provides for an intervention in the event that a municipality has a serious financial problem or is in a financial crisis. This mechanism is available to the municipality, the MEC for Local Government of the Province and the provincial executive. It is not a remedy available to the first respondent.

132. The applicant cannot seek a cost order against the first respondent for failing to invoke remedies not applicable or available to it.





133. The first respondent's conduct does not constitute a failure on the part of the first respondent, as an organ of state, to progressively realise the right of access to water "*within its available resources*". In fact, in order to realise this right, it must receive payment for the services provided.

134. In fact, insisting that the first respondent continues to provide water services in the absence of payment infringes upon everyone's right of access to water. It is precisely for this reason that the legislature enacted sections 33(1) read with section 4(5) that the first respondent is empowered to limit or discontinue the provisions of water services for reasons of non-payment subject to the proviso that notice is given.

135. While the power to terminate water services as a result of non-payment is a drastic measure, it is a reasonable and justifiable limitation in terms of section 36 of the Constitution read with sections 31(3) and 4(5) of the WSA. It is doubtless that the right to water is of paramount importance.

136. However, the nature and purpose of the limitation is to ensure that the state has sufficient resources to progressively realise the right. This entails the availability of adequate financial resources. It is therefore incumbent upon all recipients of water services to pay for the services so that the state can give effect to its constitutional obligations.

137. The extent of the limitation is such that the minimum quantity of water would be interrupted. However, the limitation is imposed to achieve the purpose that the



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state has sufficient resources to give effect to the NWRS2 and protect everyone's right of access to sufficient water. The purpose of the limitation is to ensure that there are adequate financial resources to progressively realise the right. There is no less restrictive means to achieve this purpose.

138. In addition, the applicant is not entitled to an interdict directing the first respondent to provide water services, in the absence of providing security for damages which the first respondent will suffer should the application be ultimately unsuccessful. I say so because if the final relief is refused, the first respondent would be out of pocket for these costs.

139. The determination of the payment to be made is in keeping with the NWRS2, both of which are measures implemented by the State to fulfil its obligation, as the custodian of the nation's water resources, to ensure that it achieves the constitutional obligation of providing access to water to all citizens, within its available resources.

140. It flows, as a matter of course, that non-payment for the water services rendered impedes the State from implementing the measures pertaining to the management of the nation's water resources.

141. The respondent municipalities' failure to pay for the water services provided constitutes a breach of the respondent municipalities' constitutional obligations to promote the efficient, economic use of resources in terms of sections 2, read with





section 7(2), 152 and 195 of the constitution. Thereby, it threatens everyone's right of access to water.

142. Expecting the first respondent to continue to provide water services in the absence of payment cannot be said to be unconstitutional as contemplated in section 172(1)(a) of the Constitution. Mr. Wassennaar admitted to Mr. Mbadamana that the first respondent must be paid for its services.

143. It is for this very reason that the first respondent exercised its statutory powers in terms of section 31(3) of the WSA. Having outlined the preceding steps taken above, its decision cannot be faulted.

## THE GROUNDS OF REVIEW RAISED BY THE APPLICANT

### The challenge to the procedural fairness of the decision

144. The applicant challenges the procedural fairness of the decision on the following grounds:

144.1 A public participation process ought to have been followed prior to the decision being taken. No prior notice was given by the first respondent to alert the public to its intended decision and no opportunity was granted to affected parties to make submissions to it; and

144.2 The short five-day notice period of the intention to terminate or suspend the water services is unreasonable and unfair.

145. Alberts' affidavit is replete with allegations that a public participation process should have been followed. During Mr. Wassennaar's conversation with Mr. Mbadamana, his main challenge was the absence of public participation.

146. However, this misconstrues the element of public participation and the application of the common law rule of natural justice to the decisions made by the first respondent.

147. It is correct that public participation and prior notice is required in certain instances. An example is section 33(3) of the WSA which states that:

> *'Before setting general conditions a water board must invite comment from water services institutions within its service area, its consumers and users".*

148. The suite of water legislation, strategies and policies mentioned above are replete with examples where public participation is required and was in fact followed. This includes the making of regulations by the sixth respondent, the call for comments which resulted in the NWRS2, declaring controlled activities, the setting of tariffs for water services, and issuing general authorisations.





149. However, public participation was not required in the case of the impugned decision as this function of the first respondent is specifically regulated by legislation.

150. The first respondent exercised its powers in terms of section 31(3) read with section 4(5) of the WSA. The applicant has not challenged the constitutionality of these provisions. The latter section stipulates the procedure to be followed and the persons to be notified of the intended decision.

151. The first respondent duly complied with the requirements of this section in the following respects:

151.1 It provided written notice of the proposed suspension;

151.2 It afforded the seventh respondent the stipulated 60 days' notice by delivering the notice on 30 April 2021, with the proposed implementation scheduled for 1 June 2021;

151.3 It afforded the eighth respondent 90 days' notice of the intention to suspend services from 1 July 2021, whereas it was only obliged to provide 60 days' notice;

151.4 It furnished the notice to the stipulated persons, ie. the seventh and eighth respondents, the MEC and the sixth respondent.

152. Significantly, and although it was not obliged to do so, the first respondent engaged with the respondent municipalities at the meeting held on 29 April 2021, prior to taking the impugned decision. It afforded them the opportunity to remedy their non-payment by making a suitable payment arrangement, yet they refused to do so.

153. It also addressed the issue of the conclusion of the operations and maintenance contract and was met with the response that the seventh respondent had resolved to take over the provision of these services, as detailed above.

154. The applicant assumes that the first respondent had a duty to inform the public of the intended decision and invite prior comment. This is, with respect, misplaced. The alleged inadequacy of the notice by Mr. Mbadamana is therefore irrelevant.

155. In any event, it is factually incorrect that only five days' notice was provided as the first respondent gave timeous written notice of the intended decision to the persons whom it was statutorily obliged to notify.

156. It is well-established that the fairness of the procedure followed in the case of an administrative decision is dependent on the circumstances of each case. The first respondent took the following steps to co-operate with the various organs of state involved prior to making the decision:

156.1 It established the co-ordinating committee at which, *inter alia*, the conclusion of the contracts and the issue of non-payment was discussed.

It is noted from the minutes of these meetings that the attendance and co-operation of the respondent municipalities was poor;

156.2 It dispatched various letters of demand to the respondent municipalities. The first respondent did not unreasonably demand immediate repayment of the full outstanding amounts. Instead, it demanded payment of an interim amount;

156.3 In the demands, it invited the respondent municipalities to engage with the first respondents' chief financial officer regarding any queries about payment;

156.4 It held numerous meetings to resolve the issue, including the meeting of 29 April 2021, prior to making the suspension decision. At the meeting the respondent municipalities refused to make any firm commitment to pay or liquidate the arrears;

156.5 In annexure "AA1" and "AA2", it advised the respondent municipalities to advise the communities and stakeholders of the decision as they had direct contact with these persons, and it was their responsibility;

156.6 Even after it took the decision, it delivered a further demand for payment of a portion of the outstanding amounts.

157. In *casu*, the procedure followed by the first respondent cannot be criticised on the basis of unfairness.





**The lawfulness of the decision**

158. The second ground of review is that the failure to comply with the WSA, the principles of co-operative governance and the MFMA resulted in:

158.1 action that was materially influenced by an error of law;

158.2 action that contravenes the law or is not authorised by the empowering provision.

159. An action materially influenced by an error of law is one where there is a wrong or mistaken interpretation of a legislative provision occurs. In this instance, it must be established that the error adversely affected the outcome of the decision. In the matter at hand, the decision was not taken based on a wrong or mistaken interpretation of legislative provisions.

160. An action that contravenes the law or is not authorised by an empowering provision is one where the action breaches the principle of legality in that it either breaches a law or is not authorised by an empowering provision of the law.

161. The decision to suspend the provision of water services was taken in terms of section 4(5) of the WSA. It is therefore lawful and authorised by the empowering provision. The legislature has deemed it a perquisite only to notify the province and the sixth respondent. There is no further requirement that there must be

engagements of any sort prior to or after the limitation or termination, and in this case the suspension of water services. Notwithstanding this, the first respondent in fact tried to resolve the situation by engagement prior to hastily exercising its statutory power.

162. I reiterate that in respect of the intervention mechanisms in both the WSA and the MFMA, these are not remedies available to the first respondent.

163. Consequently, the second ground must fail.

**Failure to consider relevant considerations**

164. The third ground of review raised is that the failure to pursue alternative remedies constituted a failure to consider relevant considerations.

165. This ground must fail as the first respondent engaged with the respondent municipalities and the provincial government. Therefore, it did pursue alternative remedies. The historic debt arising from 2011, which is incapable of prescribing, makes it evident that the respondent municipalities are simply being recalcitrant and are guilty of gross financial mismanagement. Such conduct cannot be ascribed to the first respondent.

166. In making its decision the first respondent took into account the following relevant considerations:





166.1 the persistent failure of the respondent municipalities to pay for the water services rendered despite numerous written demands and engagements with them;

166.2 the fact that the debt arose from 2011 and was simply increasing at a rapid rate;

166.3 the refusal of the respondent municipalities to enter into payment arrangements to liquidate the arrears, despite numerous requests by the first respondent;

166.4 the first respondent's failure to comply with its constitutional and statutory obligations outlined above;

166.5 the first respondent's refusal to regularize the contractual relationship between the parties;

166.6 the indication that the respondent municipalities did not intend entering into contracts with the first respondent to regulate the provision of water services and their indication that they intended internally providing those services going forward;

166.7 the impact of the non-payment on the financial viability of the first respondent;

166.8 the first respondent's breaches of the PFMA in failing to collect all charges due for services rendered;



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166.9 the first respondent's potential breach of the PFMA in the event that it rendered services in the absence of a written contract regulating the provision of such services;

166.10 the expiration of the Ministerial Directive of 15 October 2014;

166.11 the obligation on the first respondent, imposed by section 34 of the WSA to strike a balance between providing water services in a sustainable manner and striving to be financially viable; and

166.12 the disestablishment of the first respondent's predecessor, Botshelo Water, due to non-payment for water services which rendered it no longer financially viable;

166.13 the numerous unsuccessful engagements with the respondent municipalities, the second respondent and the sixth respondent to resolve the non-payment and the regularization of the contractual arrangements between the parties;

166.14 the impact of the suspension on the communities.

167. Upon a consideration of the above factors, it is evident that the first respondent took all of the relevant considerations into account.

**Proportionality**

168. The final ground of review is that the failure to consider less restrictive remedies and alternative remedies infringes the principles of proportionality and reasonableness.

169. In assessing the proportionality of an administrative act, one must consider the adverse and beneficial effects of an action and whether there is a possibility of a less drastic or oppressive means to accomplish the desired end.

170. In assessing the adverse effects of the decision to suspend water services, it is clear that end users will be affected. While businesses will also be affected, they have no constitutional right of access to water.

171. In assessing the need for the action and the beneficial effects, it is clear that the suspension of water services will result in a decrease in the operational expenses incurred by the first respondent. This shall stop the debt due by the respondent municipalities from increasing. It stops the first respondent from becoming financially unstable and it can focus on providing water services to paying customers.

172. In assessing the need for such action, one must consider the constitutional obligation on the first respondent to assist the state to progressively realise the right of access to water. In this regard, it must provide water services in a





sustainable manner. If it fails to do so, it fails in its duty to assist the national and provincial spheres of government to progressively realise the right.

173. In considering less drastic means, it emerges from the aforementioned facts that having continued to provide water services for the past decade, in the absence of regular payments, it is heavily in debt. The first respondent has entered in numerous unsuccessful engagements with the respondent municipalities, the second and sixth respondents. The respondent municipalities have refused to enter into arrangements to liquidate the arrears and continue to receive the water services, without making adequate payment for the current charges incurred. The first respondent has exhausted all other remedies and the only viable option was to terminate the services.

174. In light of the persistent failure to pay, the burgeoning debt and the unsuccessful attempts to resolve the issue of non-payment, the decision cannot be said to be unreasonable. A decade has passed without the matter being resolved, therefore the first respondent's conduct cannot be criticized.

175. Because the decision does not suit the applicant, it does not mean that it is not proportional. The first respondent cannot be expected to render water services in the absence of payment. It impedes the implementation of the national water resources strategy, it infringes everyone's right of access to water and prevents the first respondent from complying with its statutory obligation to be financially sustainable. It permits a breach of the obligation on all spheres of government to

realise the right of access to water and effectively manage the nation's water resources.

## THE MANDATORY INTERDICT PROHIBITING THE FIRST RESPONDENT FROM SUSPENDING OR TERMINATING THE PROVISION OF WATER SERVICES TO COMPEL PAYMENT

176. The applicant seeks a final interdict, prohibiting the first respondent from suspending or terminating the provision of water services to compel payment.

177. I have been advised that the requirements for a final interdict are as follows:

177.1 a clear right to the relief sought;

177.2 an injury actually committed or reasonably apprehended;

177.3 The absence of a suitable alternative remedy.

178. The applicant has not established any right to the relief sought. The first respondent has a statutory power, conferred by section 31(3) of the WSA, to limit or terminate water supply in the event of non-payment for such services. The limitation of the right to water, created by section 31(3) is reasonable and justifiable.

179. In addition, the effect of such an order is that the first respondent will be forced to incur further debt in the absence of a lawful underlying cause and the likelihood of receiving payment. It will be financially unsustainable, its ability to trade as a going concern is threatened and it will probably suffer the same fate as Botshelo Water.

180. The provision of operations and maintenance services was carried out in terms of the Ministerial Directive issued on 14 October 2014. It was limited to a period of five years. In the absence of a contract, the services were rendered in terms of this directive. The directive has lapsed. Section 22 of the WSA requires the seventh respondent, as the water services authority, to approve the provision of water services by a water services provider. The respondent municipalities have not granted approval to the first respondent and have indicated, that going forward, that they will internally provide the services. It would be unlawful for the first respondent to continue to provide water services.

181. The applicant has failed to demonstrate and injury reasonably apprehended or actually committee. The decision to suspend the provision of water services does not infringe the right.

182. The applicant has failed to demonstrate the absence of a suitable remedy. The applicant could institute an application to compel the respondent municipalities to provided them with water.



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183. The applicant sought the interim interdict in the absence of providing any security for the debt, pending the determination of the mandatory interdict.

184. The applicant would not have been entitled to such interdictory relief.

## THE ADVERSE COST ORDER SOUGHT

### An award of attorney and client costs is not justified

185. The applicant seeks an adverse cost order against the first applicant on the scale as between attorney and client, including the costs of two counsel where so employed.

186. In the founding affidavit by Alberts, he states that the basis on which the cost order should be granted is:

186.1 the first respondent has ignored the relevant legislation in making the decision;

186.2 although Mr. Wassennaar tried to resolve the matter without litigation on 26 May 2021, the first respondent has failed to heed the applicant's reasonable demands;

186.3 when confronted with the issue of public participation, the first respondent admitted that it had not engaged in this process;

186.4 in spite of being made aware of the requirements to settle disputes between organs of state, the first respondent persists in the implementation of the decision;

186.5 the applicant is a non-profit organisation that relies on donations from the public;

186.6 the applicant seeks to vindicate fundamental constitutional rights;

186.7 there is no reason why the applicant should be out of pocket in its attempt to compel the first respondent to comply with constitutional rights.

187. In the supplementary affidavit by Alberts, he contends that the withdrawal of the notice and the undertaking to continue to provide services renders the applicant substantially successful, justifying a cost order on the attorney and client scale.

188. The principles applicable to the grant of attorney and client costs may be summarised as follows:

188.1 an award of costs is a matter which falls within the discretion of the presiding Judge;

188.2 attorney and client costs are not lightly granted by the court and a court will only make such an order on "rare occasions";

188.3 a court does not normally make such an order unless some special grounds or exceptional circumstances are present;

188.4 such an award is exceptional and is intended to be very punitive and indicative of extreme opprobrium, however it is not limited to this purpose;

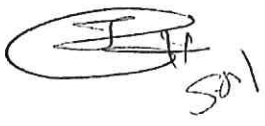
188.5 an award of attorney and client costs is granted by reason of some special considerations arising either from the circumstances which gave rise to the litigation or from the conduct of the losing party, in circumstances where the court considers it just to make such an order, to ensure more effectually that a party will not be out of pocket in respect of the expenses caused by the litigation;

188.6 the courts have granted such costs where vexatious, unscrupulous, dilatory or mendacious conduct on the part of an unsuccessful litigant may render it unfair for the harassed opponent to be out of pocket;

188.7 courts have also penalised a litigant's dishonest, improper or fraudulent conduct with such an order;

188.8 a court may award attorney and client costs against a litigant where his conduct has been unworthy, reprehensible or blameworthy or where it has been actuated by malice or there is grave misconduct in respect of the





conduct which forms the basis of the litigation or in the conduct of the case;

188.9 a court will award costs against an unsuccessful litigant where he has acted recklessly or maliciously in instituting proceedings;

188.10 such an award may also be made against an unsuccessful litigant where he has displayed a contemptuous attitude towards the court.

189. Firstly, the applicant's contention that it has been substantially successful is, with respect, incorrect. In its letter dated 31 May 2021, the applicant contends that it is entitled to attorney and client costs as:

189.1 it has been substantially successful as the litigation had the desired effect; and

189.2 the relief sought in Parts B and C are moot.

190. Although the first respondent provided an undertaking to continue to provide water services whilst it resolved the issue of non-payment with the respondent municipalities, it cannot be construed as a concession of the merits of the application. The application was instituted in great haste and in the absence of the benefit of proper and detailed consultations. The first respondent elected to preserve the status *quo*, while it attempted to resolve the bigger dispute, ie. the

persistent non-payment and its consequences on the first respondent's financial viability.

191. The undertaking was provided in good faith. The first respondent is fully cognisant of the impact that the suspension would have on the communities. However, it did not concede the merits of the application. The first respondent did not unnecessarily oppose the application. The letter from the first respondent's attorneys, does not indicate so.

192. The relief sought in Parts B and C are very much live disputes between the parties because the applicants have not formally withdrawn the application in terms of the rules of court. Therefore, it has not been determined by the court. Had such a determination been made, it is evident, from the facts outlined above, that the defences set out above are good in law. It is highly probable that the application would have been dismissed. Consequently, it is abundantly clear that the applicant would not have been successful in obtaining any of the relief sought, most especially the relief sought in Part C.

193. The principle of awarding attorney and client costs so that a successful litigant is not out of pocket for his costs, would not apply, as the applicant would not have been successful.

194. Nor has the applicant demonstrated any conduct on the part of the first respondent which is offends the principles relating to punitive costs orders,



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discussed supra, and which can be regarded as exceptional circumstances that will justify such an order.

195. In fact, the conduct of the first respondent demonstrates that in both the circumstances which gave rise to the application and the conduct of the case, that it conducted itself with utmost good faith. This is evident from the following:

195.1 it exercised its statutory power lawfully in terms of section 31(3) read with section 4(5) of the WSA;

195.2 it properly complied with the procedure set out in section 4(5) of the WSA;

195.3 before exercising its statutory power, it took numerous steps to engage with the respondent municipalities, who were simply obstructive;

195.4 it notified the provincial government and the sixth respondent, who provided no assistance;

195.5 when Mr. Wassennaar telephonically contacted Mr. Mbadamana, he was courteous and honest with him, and he properly explained the first respondent's financial predicament;

195.6 when the application was received, and due to the severely curtailed time periods, the first respondent provided the undertaking to continue to

provide water services whilst resolving the non-payment issue with the respondent municipalities;

195.7 it has complied with its undertaking notwithstanding its dire financial situation;

195.8 in the letter dated 29 May 2021, the first respondents' attorneys invited the applicant to withdraw the application, with each party to pay its own costs.;

195.9 the first respondent did not unnecessarily oppose the application and waste the court's time and resources.

196. The applicant accuses the first respondent of failing to adhere to the principles of co-operative governance yet it is evident that it has done so. A punitive cost order in these circumstances would amount to punishing the first respondent for a failure to exhaust the remedy of legislative interventions not available to it. It would be punishing the first respondent for the inaction of the other organs of state involved. This is manifestly unfair.

197. For these reasons, an adverse cost order, on the attorney and own client scale, is not justified.



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**The appropriate order is one directing each party to pay its own costs**

198. While it is correct that the applicant sought to vindicate constitutional rights, it did not demonstrate any right to the relief sought, as I have aptly demonstrated above.

199. The entire application was misplaced on a mischaracterisation of the impugned notice by Mr. Mbadamana. In addition, the applicant launched the application on various unsound legal grounds, including that:

199.1 the notice is a decision, capable of review in terms of PAJA;

199.2 the first respondent's decision was illegal as it was not authorised by an empowering provision;

199.3 the first respondent ought to have followed a public participation process prior to taking the suspension decision;

199.4 the first respondent failed to take any steps to co-operate with the various organs of state to resolve the issue of non-payment;

199.5 the first respondent ought to have exhausted intervention remedies even though they are not available to it.

200. The facts and legal defences set out in this affidavit, make it plain that the applicant has not made out a case for any of the relief sought. It would be regarded as an unsuccessful litigant against the state.

201. In *Biowatch* the Constitutional Court found that in the case of a private party who litigates against the state, seeking to protect a constitutional right, and loses, the just and equitable order is that each party should pay its own costs to avoid what it describes as a "chilling effect" that would deter others from approaching the courts for such protection.

202. I digress to mention that there are exceptions to this rule, such as where the litigation is frivolous, vexatious, manifestly inappropriate or where the conduct of a litigant deserves the court's censure. However, these exceptions do not apply in this case.

203. In the circumstances, a just and equitable order is that each party should pay its own costs.

## *AD SERIATIM* ALLEGATIONS CONTAINED IN THE AFFIDAVITS DEPOSED TO BY ALBERTS

204. In the event that I do not specifically deal with any of the allegations contained in the affidavits deposed to by Alberts, these allegations are denied.

205. Firstly, I deal with the Alberts' Founding Affidavit.





**Ad paragraph 1**

206. Save to admit the identity of the deponent, I have no knowledge of the remaining averments contained herein and deny same.

**Ad paragraph 2**

207. I admit the averments contained herein.

**Ad paragraph 3**

208. I deny that the facts contained in Alberts' affidavit are true or correct. I deny the remaining averments contained herein.

**Ad paragraph 4**

209. I deny that the legal submissions contained in Alberts' affidavit are correct.

**Ad paragraphs 5 and 6**

210. Save to admit that the municipalities cited herein are situated within the jurisdiction of this Honourable Court, I deny the remaining averments contained herein.



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**Ad paragraph 7**

211. Save to admit the name of the applicant, I have no knowledge of the remaining averments contained herein and deny same.

**Ad paragraphs 8 to 12**

212. I have no knowledge of the averments contained herein and deny same.

**Ad paragraph 13**

213. Save to admit that annexure X2 is a copy of an extract of the applicant's Memorandum of Incorporation, I deny the remaining averments contained herein.

**Ad paragraph 14**

214. I deny the averments contained herein.

**Ad paragraph 15**

215. I admit the averments contained herein.

**Ad paragraphs 16 to 20**

216. I admit the averments contained herein.

**Ad paragraph 21**

217. I have no knowledge of whether the application was served on the State Attorney, in respect of the respondents referred to herein, and deny all the allegations in these paragraphs.

**Ad paragraphs 22 to 27**

218. I admit the averments contained herein. However, I aver further that the applicant is not entitled to the relief sought, nor is it entitled to an adverse cost order against any of the respondents.

**Ad paragraph 28**

219. I admit that the relief sought by the applicant is as set out in herein, however, I deny that it is entitled to such relief.

**Ad paragraph 31**

220. I admit that the notice, dated 25 May 2021, and annexed to Alberts' founding affidavit, marked X3, was disseminated to certain of the first respondent's employees, I deny the remaining averments contained herein.

221. The notice was not a decision but merely an internal communication to its staff.

**Ad paragraph 32**

222. I deny that the notice was at the instance of the first respondent.

223. As stated above, it was a notice issued by the Regional Manager of the first respondent.

224. As set out above, the notice was withdrawn.

225. Save as is consistent with what is stated above, I deny the remaining averments herein.

**Ad paragraph 33**

226. Save to state that the notice was issued by the Regional Manager and that he instructed the first respondent's staff as set out in the notice, I deny the remaining averments contained herein.

**Ad paragraph 34**

227. I have no knowledge of the averments contained herein and deny same.

**Ad paragraphs 35, 36 and 37**

228. I admit that Mr Wassenaar telephonically contacted Mr Mbadamana. It is apparent from the transcript, annexed as X4 to Alberts' affidavit that the telephone





conversation was recorded and transcribed. I have dealt with this conversation extensively above.

229. I deny the remaining averments contained herein.

**Ad paragraph 38**

230. I admit the averments contained herein. I deny that the public participation process was competent in the circumstances.

**Ad paragraph 39**

231. A response was furnished on 29 May 2021. A copy of the response is annexed to the supplementary affidavit marked "CC1".

**Ad paragraph 40**

232. I deny the averments contained herein. I have dealt with the decision above. The communication contained in the notice was simply an internal communication to the first respondent's staff situated in the Mahikeng area. The notice specifically advised the respondent municipalities to communicate the decision to the affected communities.





**Ad paragraphs 41 and 42**

233. I deny the averments contained herein. It was an obligation resting upon the respondent municipalities to notify the communities.

**Ad paragraph 43**

234. I admit the relief sought by the applicant as set out in Part C of the notice of motion. However, I deny that the applicant is entitled to the relief sought.

235. I deny the averments contained herein.

**Ad paragraphs 44 and 45**

236. I deny any intergovernmental dispute between the parties. It is simply a failure to pay. The sixth respondent and the respondent municipalities have failed to comply with their constitutional obligation to make payment for the water services provided and thereby ensure that the National Water Resources Strategy can be implemented. This infringes on everyone's right of access to water.

237. I deny the remaining averments contained herein.





**Ad paragraph 46**

238. I deny that the first respondent has engaged in decision making which is invasive, unilateral or unlawful.

239. The decision to be made is within the sole preserve of the first respondent. It was taken in terms of sections 31(3) and 4(5) of the WSA and is therefore lawful.

240. I deny the remaining averments contained herein.

**Ad paragraphs 47 and 48**

241. Whilst I admit that the suspension of the provision of water services will doubtlessly impact the residents and business owners within the jurisdiction of the respondent municipalities, the first respondent cannot reasonably be criticised in the event that it elected to suspend the provision of such services.

**Ad paragraph 49**

242. The right of access to basic water has been explained above. Any decision to suspend the provision of water services to the respondent municipalities would not infringe on the right of access to water enjoyed by the inhabitants and business owners as contemplated in section 27 of the Constitution.



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243. I reiterate that the notice was an internal communication to the first respondent's staff.

244. I deny the remaining averments herein.

**Ad paragraph 50**

245. I deny the averments contained herein.

**Ad paragraph 51**

246. I admit the averments contained herein. I submit that the provisions of section 31(3) empower the first respondent to act and is a reasonable and justifiable limitation of the right to water.

**Ad paragraphs 52 to 55**

247. I deny the averments contained herein.

**Ad paragraph 56**

248. While the interruption of the provision of water could result in a humanitarian and an economic crisis, the first respondent is perfectly entitled to interrupt the provision of the services due to non-payment. It cannot reasonably be expected

that the first respondent should be obliged to continue to provide the services in the absence of payment.

**Ad paragraph 57**

249. I deny the averments contained herein. The impugned decision was taken on 30 April 2021. The requisite 60 days' notice was duly provided.

**Ad paragraph 58**

250. The respondent municipalities have indicated that they intend taking over the provision of the specialised operational management services and would be capable of themselves operating the services.

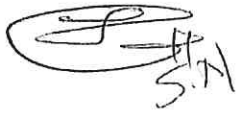
251. The allegations contained in this paragraph, that the termination would result in the municipalities being in breach of their constitutional duties to supply water to their residents, is incorrect.

**Ad paragraph 59**

252. I admit that the water reticulation network is also a necessary part of the sewage and sanitation network.

253. I reiterate that the first respondent cannot be compelled to provide the services in the absence of payment.





**Ad paragraph 60**

254. As stated above, the access of right to water is a qualified right. The obligation on the State is to progressively realise this right within its available resources. The failure of the respondent municipalities to pay for the provision of the water services impedes the first respondent from operating sustainably to comply with its constitutional obligations to realise the right of access to water.

255. Although any suspension of the quantities of water provided to the inhabitants and business owners may be reduced, thereby implicating certain other constitutional rights, this is reasonable and justifiable in the circumstances.

256. I have been advised that any limitation of the rights referred to are reasonable in terms of section 36 of the Constitution.

**Ad paragraphs 61, 62, 63**

257. I admit the averments contained herein.

**Ad paragraph 64**

258. I admit the averments contained herein. However, the applicant has failed to mention that the right is subject to the proviso that water must be provided within the available resources of the State.

**Ad paragraph 65**

259. I admit the averments contained herein.

**Ad paragraph 66**

260. I admit the averments contained herein.

**Ad paragraph 67**

261. I note the averments contained herein.

**Ad paragraphs 68 and 69**

262. I reiterate that there is no dispute as to the applicant's liability to pay the first respondent for the water services provided.

263. As stated in the letter of Mr. Solwandle, dated 29 May 2021, the first respondent shall take the necessary steps to address the non-payment with the applicant.

264. The extensive steps already taken by the first respondent to obtain payment has been dealt with above.

265. I deny the remaining averments herein.

**Ad paragraph 70**

266. The notice was merely an internal communication to the staff of the first respondent and is not capable of being reviewed. I deny that any of the grounds of review have merit.

**Ad paragraphs 71 - 75**

267. I deny the averments contained herein. The applicant has failed to demonstrate a *prima facie* right, or a clear right, to the relief sought.

**Ad paragraph 76 - 82**

268. Save to admit the importance of the need for water, I deny the remaining averments contained herein.

269. The sixth respondent has expressed the intention to take over the operations and maintenance services.

270. I reiterate that the applicant has failed to demonstrate that it shall suffer irreparable harm.

**Ad paragraphs 83 - 85**

271. I deny the averments contained herein.

**Ad paragraphs 86 – 96**

272. I deny that the applicant appropriately tailored the notice of motion in light of the urgency it alleged. The time periods afforded to the first respondent was unjustified in the circumstances.

273. I deny the remaining averments contained herein.

**Ad paragraphs 97 and 98**

274. I note the averments contained herein.

**Ad paragraphs 99 - 103**

275. I deny the averments contained herein. The applicant has failed to make out a case for any of the relief sought and is therefore not entitled to an order of costs.

**Ad paragraph 104**

276. I deny that the applicant is entitled to the relief sought.

277. I turn to deal with the supplementary affidavit by Alberts.

**Ad paragraphs 1 and 2**

278. I admit the averments contained herein.

**Ad paragraph 3**

279. I deny that the facts contained in the supplementary affidavit are true or correct.

**Ad paragraph 4**

280. I note the averments contained herein.

**Ad paragraph 5**

281. I admit the averments contained herein.

**Ad paragraph 6**

282. The first respondent has filed a notice of opposition.

**Ad paragraph 7**

283. Save to admit that the applicant seeks costs, I deny that it is entitled to such an Order.





**Ad paragraph 8**

284. I admit the averments contained herein. I deny that the applicant satisfied the requirements for urgency.

**Ad paragraph 9**

285. I deny that the letter constitutes withdrawal of *"the decision"* as alleged by the applicant. It was confirmation of the withdrawal of the notice, which was an internal communication.

**Ad paragraph 10**

286. Save to state that I do not have personal knowledge of the advice rendered by the applicant's attorneys I admit the remaining averments contained herein.

**Ad paragraph 11**

287. Save to deny any implied withdrawal of a decision, I admit the remaining averments contained herein.

288. I deny that the applicant is entitled to an Order directing the first respondent to pay the costs, let alone on the attorney and client scale.



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**Ad paragraph 12**

289. Save to deny that the first respondent has not tendered the applicant's costs, I admit the remaining averments contained herein.

**Ad paragraph 13**

290. I deny the averments contained herein.

**WHEREFORE** I pray that the prayer for costs be dismissed with costs, on the scale as between attorney and client, such costs to include the costs of two counsel.

**TOTO MOLOBYE**

THUS SIGNED AND SWORN TO before me at BOTHAVILLE on this the 1st day of DECEMBER 2021 by the deponent who acknowledges that he/she knows and understands the contents of this affidavit; that it is the truth to the best of his/her knowledge and belief and that he/she has no objection to taking the prescribed oath and regards the same as binding on his/her conscience and the administration of the oath complied with the Regulations contained in Government Gazette No R1258 of 21 July 1972, as amended.

7181668-2
Dlamini S.N Dlamini

**COMMISSIONER OF OATHS**

EX OFFICIO :
FULL NAMES : Sdinah Ntshiwa Dlamini
PHYSICAL ADDRESS : 1529 Makoluta Str, Bothaville
DESIGNATION : Constable

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE
01 DEC 2021



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